



IN THE HON'BLE SUPREME COURT OF INDIA  
CIVIL WRIT PETITION NO : 833 OF 2013  
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF :

MS. ARUNA ROY & ANR.

...PETITIONER

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS  
(UIDAI)

PAPER BOOK  
(VOLUME-I)  
(FOR INDEX, KINDLY SEE INSIDE)

DS MAHRA  
ADVOCATE ON RECORD FOR THE PETITIONER

## INDEX

<u>Srl No.</u>	<u>Particulars</u>	<u>Pages</u>
1.	Counter Affidavit on behalf of Respondents	1 to 68

IN THE SUPREME COURT OF INDIA  
EXTRA ORDINARY ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. 833 OF 2013

IN THE MATTER OF:

MS. ARUNA ROY &Anr.

... Petitioner

Versus

UNION OF INDIA & ORS. ...Respondent

COUNTER AFFIDAVIT  
ON BEHALF OF RESPONDENT

I, Ashish Kumar S/o ShriU. Kumar aged, 48 R/o C-II/2178, VasantKunj, New Delhi-110070 do hereby solemnly affirm and declare on oath as under:

1. That I am working as Assistant Director General of UIDAI and therefore, have been authorized to swear this affidavit. It is stated that, I am well conversant with the facts of the matter as derived from official records and, therefore, competent to sign and swear the present affidavit.

That at the outset, the answering deponent denies each and every contention, allegation and averment made in the present petition unless specifically admitted herein below. The averments of the petition which are not specifically dealt herein below should be



deemed to have been denied. It is respectfully submitted that the instant reply is being filed by the answering deponent without prejudice to his right to file a fuller and more detailed reply at a later stage, if so necessary.

### PRELIMINARY OBJECTIONS

The deponent has been advised to state that the above titled Writ

Petition is not maintainable, *inter-alia*, for the following reasons:

A. That the contents stated in the present Writ Petition (Civil) are mischievous and have been filed in ignorance of the well-established principle of Constitutional law and the law laid down by this Hon'ble Court in a number of judgments as well as law for the time being in force, and hence the same is not maintainable in the eyes of law.

B. That the present Writ Petition in the guise of the Public Interest Litigation is without any bonafide basis and therefore, the contents and averments stated in the present Writ Petition are denied unless specifically admitted by the answering Respondent.

C. That the present Writ Petition (Civil), neither raises any question of law pertaining to the Constitution of India which needs interpretation of this Hon'ble Court nor substantiates as to how the issuance of the a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the Right to



Privacy guaranteed to the subject/s under Article 21 of the Constitution of India.

Therefore, the present writ petition fails to disclose the infringement of the Fundamental Right enshrined under Part III of the Constitution of India and hence is not maintainable under Article 32 of the Constitution of India and therefore, fit to be dismissed with exemplary cost.

- D. That the petitioner has failed to appreciate the finer nuances of law as the petition is full of contradictions, and based on conjectures and hyperbole statements.
- E. That the petitioner without understanding the nature, manner, scope, and procedure involved in UID system and the resultant benefits which would accrue to the beneficiaries of various social welfare schemes, is seeking intervention of this Hon'ble Court to declare implementation of UID scheme in its present form as violative of the fundamental rights of citizens and hence illegal and unconstitutional.

#### PRELIMINARY SUBMISSIONS

- F. That the Present Writ Petition filed by the Petitioner does not deal with the well-established principle of law laid down by this Hon'ble Court in a catena of the judgment/s with regard to the question raised in the instant petition, and therefore, the respondent craves leave of this Hon'ble Court to deal with the same in the backdrop of the background/history of the issuance.



of the Aadhaar Number/s by the Unique Identification Authority of India (UIDAI).

### BACKGROUND OF AADHAR SCHEME

The UIDAI has been constituted by the Government of India as an "Attached office" of the Planning Commission by an executive order and its functioning is fully backed by statutes. It has been assigned responsibilities under the Government of India (Allocation of Business Rules) in exercise of the powers conferred by Clause (3) of Article 77 of the Constitution. The UIDAI is authorized to incur expenditure from the Consolidated Fund of India as approved every year by the Parliament under the Appropriations Act. All issues relating to the Unique Identification Authority of India including its organization, plans, policies programmes, schemes, funding and methodology to be adopted for achieving the objectives of the Authority are supervised by a duly constituted Cabinet Committee on Unique Identification Authority of India related issues. The Unique Identification Authority of India is bound by the General Financial Rules of the Government of India, it is subject to audit by the Comptroller & Auditor General of India and is administered like any other Central Government department.

Aadhaar is simple and intuitive and designed for the common person to prove his identity using secure biometrics. Being a virtual/digital ID, Aadhaar cannot be lost or damaged like other forms of ID and is therefore particularly user friendly for the poor who can easily soil or lose physical forms of ID. Aadhaar does not necessarily require internet connectivity and works using mobile connectivity across the country. The cost of Aadhaar



authentication will be definitely less than photocopy of a page. Aadhaar authentication can take place using in-expensive but secure handheld devices which will enable service providers to go to residents rather than requiring residents to come to them to prove their identity. The simplicity of Aadhaar at the front/user end is complimented by a state of the art, fully secure, high technology, best in class backend.

The Aadhaar scheme is the unique identification project launched by the Government of India and is being implemented by the Unique Identification Authority of India (UIDAI). A copy of the notification dated 28.01.2009, through which the UIDAI was set up is annexed herewith as **ANNEXURE-R/1 (Pages 69 to 71)**. It is submitted that, Aadhaar is a random 12-digit unique number which the UIDAI issues to all residents in India on a voluntary basis. The random number generated is devoid of any intelligence and does not profile people based on caste, creed, religion, income and geography. The number will be stored in a centralized database and linked to the basic demographics and biometric information – photograph, ten fingerprints and both iris – of each individual. It is verifiable in the form of Yes/ No to establish identity of a person in an online, cost-effective way. It is unique and robust enough to eliminate the large number of duplicate and fake identities in Government and private databases. Further, to ensure uniqueness and privacy of the individual, it has been made essential that the bio-metrics captured are as per the specifications laid down by the Bio-metrics Standards Committee.



The UIDAI is collecting bare minimum demographic information from the residents such as name, age, gender, address and relationship details in case of minors alongwith biometric information such as photograph, ten fingerprints and iris for issue of unique identity number. It is pertinent to mention that in doing so the UIDAI is only computerising the age old system of individuals providing name, address, age, gender, address, photo and fingerprints to identify themselves. The use of biometrics/thumb impression is a time honoured practise and Aadhaar is merely making a manual process electronic through computerisation in a fully secure and foolproof manner. In UIDAI terminology this is commonly known as "Know your Resident (KYR)." A copy of the Aadhaar enrollment form is annexed herewith as **ANNEXURE-R/2 (Pages 72 to 73)**. In fact, India was the first country in the world, way back in 1877, when William James Herschel, a Civil servant posted as Magistrate in Hoogly (Calcutta) used fingerprints as signatures for government pensioners and later on land titles and jailers' warrants. Again, it was an Indian, AzizulHaque, in 1897, who came up with a comprehensive system for classifying fingerprints, which later came to be known as 'Henry Classification System'. [Source: *Fingerprints: The Origins of Crime Detection and the Murder Case that Launched Forensic Science* by Colin Beaven, Hyperion, New York, 2001]

A resident who seeks to obtain an Aadhaar number shall provide his/her demographic and biometric information to enrolling agencies appointed by Registrars using verification processes



prescribed by UIDAI as this will ensure that the data collected is clean right from the beginning of the programme. A resident who does not possess any documentary proof of identity or proof of address can obtain an Aadhaar number by being introduced by an introducer. This has been done in order to ensure that the Know Your Resident (KYR) standards of UIDAI does not become a barrier for enrolling the poor without compromising the integrity of the data.

The partner registrars are using this resident interface as an opportunity to update their own selected data bases such as ration card number, MGNREGS job card number, PAN card etc. This is commonly known as "Know your Resident Plus" (KYR+). Collection of these information is purely an initiative of respective Registrars and not mandatory for issue of Aadhaar number. The UIDAI has executed Memoranda of Understanding (MoU) with the partners including all the States and Union Territories, financial institutions, PSUs etc. to act as Registrars for implementing the scheme. The Registrar General of India (RGI), the authority under the Ministry of Home Affairs conducting the exercise under the National Population Register (NPR) is an important partner registrar in the enrollment process. A copy of the list of registrars partnering with UIDAI is annexed herewith as **ANNEXURE-R/3 (Pages 74 to 76).**

The UID scheme is envisaged as a means to enhance the delivery of welfare benefits and services. Before the advent of UID Scheme there was no universally available document which was uniformly acceptable as proof of identity across India – irrespective of age, gender and familial connections. Thus



establishing identity has always been a challenge for the poor, particularly when they move from place to place, as a consequence lack of proof of identity makes it difficult for the poor to access benefits and services and hence enrolling for UID Scheme Aadhaar number may be the first form of identification they will have access to.

As per the UNESCO report on 'Social Inclusion of Internal migrants in India' (June 2013), "In India, internal migration accounts for a large population of 309 million as per Census of India 2001, and by more recent estimates, 326 million (NSSO 2007-2008), nearly 30 per cent of the total population. Internal migrants, of which 70.7 per cent are women, are excluded from the economic, cultural, social and political life of society and are often treated as second-class citizens. The constraints faced by migrants are many - lack of formal residency rights; lack of identity proof; lack of political representation; inadequate housing; low-paid, insecure or hazardous work; extreme vulnerability of women and children to trafficking and sex exploitation; exclusion from state-provided services such as health and education and discrimination based on ethnicity, religion, class or gender. In the absence of proofs of identity and residence, internal migrants are unable to claim social protection entitlements and remain excluded from government sponsored schemes and programmes." Aadhaar being an online identity, has the potential to enable these migrants to obtain access to welfare services hitherto denied to them.

#### **Aadhaar – Pro-poor Approach**



An important public policy imperative for introduction of Aadhaar was the understanding of the Government that a large number of residents, primarily the poorest are not able to access services and benefits intended for them for want of being able to prove their identity to service providers and agencies that dispense them. This results in a huge "poverty premium" being paid by the poor in terms of transaction and opportunity costs. It is well known that provisions of law notwithstanding the birth of close to half the population in many States are not registered. A large percentage of people do not have a birth certificate, the primary document used to prove identity and citizenship.

An inclusive design for enrolment into Aadhaar was therefore deliberately adopted by the Government of India. It was decided that Aadhaar will prove identity and not citizenship given the difficulty the vast majority, particularly the poor, would have in proving their citizenship credentials in the absence of birth certificate or passport. Based upon the recommendations of an expert Committee as contained in its report, "Demographic Data Standards and Verification Procedure Committee Report" (Chairman: Shri N. Vittal, ex-CVC) dated 09.12.2009, the Government adopted the suggested process of verifications to be followed for enrolment of residents into the Aadhaar system. Accordingly, three distinct methods of verification for obtaining Aadhaar have been adopted:

- Based on supporting documents
- Based on Introducer system
- Based on National Population Register process of public scrutiny.



Each of these methods is well considered, provides for robust verification following a due process and leaves a permanent trail, electronically captured, detailing the entry of each and every individual into the system.

Enrolment of residents with proper verification is a key concern of the UIDAI and for this purpose it ensures proper verification of their demographic and biometric information. As a part of its pro-poor approach the UIDAI focuses on enrolling India's poor and under privileged community for many of whom Aadhaar may be the first form of identification but no one gets enrolled for Aadhaar without undergoing the prescribed method of verification.

#### **Aadhaar – An Enabler**

It is submitted that Aadhaar number is a generic identity marker designed to enable multi-purpose functionalities. By intent it is not an ID in the nature of a Citizenship card or a functional domain specific ID like a Voter/Ration Card or a driving license all of which are commonly used as proxy ID documents in the absence of a pure ID like Aadhaar. Instead, Aadhaar is a generic proof of ID which can be used by agencies to identify and authenticate individual entities (citizens, voters, BPL, passport, pensioners, scholar etc) in their data base following their respective mandate and protocol.. The benefits of Aadhaar number are:—

**For residents:** The Aadhaar number will become a Lifetime ID where 50% residents are without a birth certificate. It will be an ID that is valid nationwide unlike proxy ID's like ration card which



are not recognised beyond the issuing state and are often the only ID of the poor. Aadhaar as a pan-India ID will be particularly useful for an estimated 400 million domestic migrants particularly those moving from rural to urban areas. Once residents enroll, they can use the Aadhaar number to access most of the services such as obtaining a bank account, passport, driving license, and so on instead of the proxy documents like ration card, driving license which are documents for entitlement of rations, entitlement to drive etc. The number will also give migrants mobility of identity.

For Governments: Eliminating duplicate / ghost beneficiaries under various schemes is expected to save the Government exchequer a substantial amount. It will also enable the Government to reduce fiscal deficit through targeted subsidies and direct benefit programs. Further by making for end to end computerisation, Aadhaar will increase transparency, accountability and audit as it will be possible to trace every benefit that flows from the Government to individual residents.,.

It is further submitted that UIDAI has developed a robust monitoring and evaluation framework which provides a comprehensive mechanism for continuously monitoring and evaluating the UIDAI programme. The draft National Identification Authority of India (NIDAI) Bill finalised by the Government also has provisions to constitute an 'Identity Review Committee (IRC)' to discharge functions in respect of any matter connected with the usage of Aadhaar numbers. The IRC members will be selected by a Committee to be chaired by the Prime Minister with membership of the Leader of the Opposition



in Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister. The Review Committee shall ascertain the extent and pattern of usage of the Aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage of the Aadhaar numbers along with its recommendations thereon and submit the same to the Central Government. A copy of this report is also to be tabled in both Houses of Parliament.

Presently, UIDAI undertakes following audits on a periodic basis: (i) Enrolment Client Audit; (ii) Enrolment Process (Field) Audits; (iii) Application Software Development and Maintenance and Service Agency (ASDMSA) Application Audits; (iv) Authentication User Agency Audits; (v) Data Center Audits; (vi) Security Audits; (vii) Impact Assessment (Grants in Aid for Research); and (viii) Other Third Party Audit Services.

It is humbly prayed that the UID project is a complex technology project. Nowhere in the world has such a large bio-metric database of a billion people being maintained. The technical architecture of the UID scheme has been structured to ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security.

The Aadhaar scheme is the largest scheme in the world seeking to provide a unique identification number to more than one billion residents of India. As on 30<sup>th</sup> September 2013, more than 53 Crore residents have enrolled for Aadhaar and an amount of Rupees Three Thousand Four Hundred and Ninety Four Crore (Rs. 3,494 crore) has been incurred on the programme by the Central Government. The following Central governments and

related State governments as well the public sector agencies have commenced use of Aadhaar as identity infrastructure and its application in their scheme of things:

**Central Government Ministries using Aadhaar based Identity systems:**

1. Ministry of Petroleum and Natural Gas
2. Ministry of Social Justice and Empowerment
3. Ministry of Human Resources (Department of Higher Education)
4. Ministry of Human Resources (Department of School Education and Literacy)
5. Department of Tribal Affairs
6. Department of Minority Affairs
7. Ministry of Women and Child Development
8. Ministry of Health and Family Welfare
9. Ministry of Labour and Employment
10. Department of Posts

**State Governments Involvement and Usage of Aadhaar based Identity System:**

1. Andhra Pradesh
2. Chandigarh
3. Delhi
4. Haryana
5. Jharkhand
6. Karnataka
7. Madhya Pradesh



8. Maharashtra
9. Puducherry
10. Punjab
11. Rajasthan
12. Himachal Pradesh
13. Tripura
14. Sikkim

These Ministries/Department have 28 beneficiary programmes using Aadhaar based Identity systems. Some other achievements are as follows:

- a) 139 banks which have had Aadhaar beneficiary transactions. Details of these banks arranged in alphabetical order is annexed and marked as **Annexure R/4(Pages 77 to 80 )**.
- b) 121 banks are currently live on Aadhaar Payment Bridge (APB).
- b) More than 11 lakh people have received their MGNREGS wages/ pensions using Aadhaar online authentication services in September 2013 alone with a biometric authentication success rate of nearly 96%. This system is being used by India Post and banks.
- d) As on date, 3.2 crore people have bank accounts linked to Aadhaar thus making them ready to receive any subsidy/ welfare payment by the Government.

The cases where benefits in terms of plugging leakages, elimination of ghost and duplicate beneficiaries etc. have been summarised and annexed herewith as **ANNEXURE-R/5 (Pages 81 to 83 )**.



## Aadhaar – A Tool for Empowerment

The introduction of Aadhaar needs to be seen in the same vein and as a part of the continuing quest of the Government to improve efficient and transparent delivery of public services.

However, for providing social security benefits and subsidies which are eligibility based there cannot be any lawful objection for the Government to insist on the use of Aadhaar to ensure the benefits reach only the entitled persons as also to plug wasteful and fraudulent leakages.

Aadhaar has been designed specifically to assist in meeting these ends. The Government of India recognizes it as a strategic policy tool for social inclusion, public sector delivery reform and for managing the fiscal deficit. The importance and utility of Aadhaar for delivery of public services has also been recognized by this Hon'ble Court in WP(C) No.196/2001, *PUCL Vs. Union of India* vide order dated 14.09.2011 as well its judgement as in Civil Appeal No.958/2013, *State of Kerala & Others Vs. President, Parents Teachers Association, SNVUP and Others*. Copies of these judgments are annexed herewith as **Annexure R/ 6 (Colly)(Pages 84 to 115 )**.

The Aadhaar scheme is primarily a developmental initiative and its design features, enumerated above, have been arrived at with the express purpose of improving delivery of social security benefits and subsidies, plugging leakages and wastes, eliminating fakes and duplicates and enhancing transparency and accountability.



G. The scheme has the approval of the Government at the highest level and its funding requirements are being met year after year with the approval of the Parliament under the Appropriation Act. The application of Aadhaar to the social security benefit programmes of the Government is clearly in the larger public interest. The purpose of the Government's is to bring about transparency, accountability and better governance of the social schemes which shall be enhanced if Aadhaar is used by them for establishing identity. That it is submitted that the UID Scheme since its inception is meant to provide identification for each resident of India to facilitate access to benefits and services and this is also enshrined in the National Identification Authority of India Bill. This should be seen as electronic governance (e-Governance) measure to provide effective and efficient Government -to- Citizen (G2C) and Government-to-Government (G2G) interface. In this context, it is significant to note that the Information Technology Act (IT Act, 2000) and the Rules made thereunder have granted legal sanctity to e-Governance framework by recognising use of electronic records and electronic signatures. It has also recognised the role of service providers for efficient delivery of services.

H. That it is submitted that UID system acts as a facilitator as it facilitates end-to-end computerisation resulting in identification of an individual in the form of a random 12 digit unique number. Linking this 12 digit number to various social welfare schemes is a logical and natural step and for which the State cannot be faulted as the objective and the scope behind every social



welfare scheme is to make such scheme(s) more effective and efficient and to reach maximum number of people.

- I. That it is humbly submitted that without the UID scheme it would have been difficult to prepare beneficiary databases which are devoid of fakes/ duplicates. It is important that the economics of a scheme should be appreciated keeping in view the limited budgetary resources a particular scheme may have. It is more important for the State to weed out the "fakes" and "duplicates" for the larger social good in the short run than to keep on suffering them forever at a huge recurring social welfare cost in view of the limited resources at the command of the State. If certain social welfare schemes have been seeking mandatory Aadhaar enrolment it is to make sure that the beneficiaries would be regularly getting benefits not only from one social welfare scheme but other such schemes as well. Once identified, the benefits will automatically come to them free from any middlemen or outside influence. It would bring regular benefits as envisaged in scheme(s) and thus improving the quality of life.

That it is submitted that these schemes facilitated by Aadhaar is kind of technology-enablement of large section of population who have always remained in the category of digital have not's. It is submitted that it is not about receiving the exact same benefit by having a mandatory UID number under a scheme, but receiving the benefit regularly, whether every day, every week, every fortnight or every month as per the scheme. It is the regularity of entitlement, which would bring quality of life to the poorest of the poor and not the 'exact same benefit' as argued by the



petitioners. This can only brought be by digital empowerment using Aadhaar number as a facilitator.

J. That it is humbly submitted that the petitioners' have failed to realize that it is the end-to-end computerisation which has resulted in a Aadhaar number and, it is again end-to-end computerisation which would result in targeted beneficiary getting the benefits of social welfare schemes of the State on regular basis.

K. That it is submitted that UID scheme is not working under a legal vacuum. Even though the Government has finalised the draft National Identification Authority of India (NIDAI) Bill, nevertheless, the IT Act and Rules made thereunder are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or information. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 define "Biometrics" as:

".....the technologies that measure and analyse human body characteristics, such as 'fingerprints', 'eye retinas and irises', 'voice patterns', 'facial patterns', 'hand measurements' and 'DNA' for authentication purposes."

L. That it is prayed that the right to privacy is not an absolute right. In *Sharda v. Dharampal*, (2003) 4 SCC 493, this Hon'ble court has held that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. Again in *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women*, AIR 2010 SC 2851, this Hon'ble Court has held that



there is no violation of the right to life, or privacy of a person, in directing a DNA test to be undergone by him - to undergo such test is not an invasion of his right to life. Moreover, Right to Privacy of has to be seen in the context of Right to Identify and Authenticate by government agencies for ensuring that services reach only those beneficiaries who are entitled to. It has been age old practice to use physical photographs and thumb impressions in identification and authentication. In the context of this petition, it is submitted that if for the purpose of 'public good', personal and sensitive personal information of a beneficiary not only being sought by UID but it is further linked to other State social welfare benefits in a fair, just and reasonable manner and for lawful purpose then the Right to Privacy cannot said to be said to be violated as enshrined under Article 21 of the Constitution.

#### **PARAWISE REPLY:**

1. That the contents of Para 1 of the Writ Petition are mischievous and hence disputed and denied. It is submitted that Aadhaar Number to the residents, on a voluntary basis, does not in any manner amount to an infringement of Fundamental Rights guaranteed to the Subject/s under Part III of the Constitution of India. The Consent of the individual is a sine qua non before issuing a Aadhaar Number and therefore, it is a voluntary project with the object to promote inclusion and benefit to the marginalized sections of society who have no formal proof of identity vis-à-vis the State and hence experience difficulties in accessing various welfare schemes



that are implemented by the Government of India and State Governments.

2. That in response to Para 2 no comments are offered.
3. That in response to Para 3 no comments are offered.
4. That the contents of para 4 are not denied to the extent that UID project is intended to provide identity for each resident across the country and would be used primarily as the basis for efficient delivery of welfare services. The rest of content of para 4 of the Writ Petition are mischevious and hence denied.

It is submitted that the UID Scheme when it was introduced in January 2009 meant to provide identification for each resident of India, and also define usage and applicability of UID for delivery of various services. It is humbly submitted that this should be seen as e-Governance measure to provide effective and efficient Government –to- Citizen (G2C) and Government-to-Government (G2G) interface.

5. That the contents of para 5 are misleading, false and hence denied. It is submitted that the very nature of Aadhaar, and its basic features which are designed innovatively leading to no duplication, proof at point of presence making sure that only the genuine beneficiary gets the benefit, no fakes as this cannot be obtained by non-existent individuals pre-suppose the use of biometrics as unique to each individual. Indeed, the advantages of Aadhaar will be lost if there were to be no use of biometrics. It is also submitted that in order to identify any individual out of a pool of millions and millions of individuals,



one requires unique parameters, which would set that individual apart. These parameters are ideally in the present context could be a combination of both 'personal' and 'sensitive personal information or data'. An individual cannot be uniquely identified in a pool of millions and millions of individual on the basis of combination of name, age, gender, parents details, education, address (place) only. It requires linkage (or reference) to sensitive personal data of such an individual to bring out the "uniqueness". Further, it is incorrect to say that any information is being collected in the garb of providing ID, as extensive publicity is being given as to the methodology of how Aadhaar is created, and enrolments are being done with the full consent, and voluntarily on part of the enrolees. Biometric information of the individual is being considered as one such sensitive personal information of such individual and it is being collected only after the individual gives her/her express consent and the sensitive personal data thus is not violative of Right to Privacy. Further, collection, processing and handling of sensitive personal data is covered under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which falls under the Information Technology Act, 2000.

6. That contents and averments of para 6 (including sub-para a and b) is incorrect and hence disputed and denied. In fact, Aadhaar aims to remove the fake and duplicates from the databases of beneficiaries of various welfare schemes, and by its very design, is not capable of creating fake identities.



The Petitioners are making a claim the grounds of which are non-existent. Further, the petitioner has failed to annex any study etc. giving details of the failure of pilot projects and the inherent flaws that were noticed in the scheme itself.

It is submitted that there exists a legal framework in the form of IT Act, 2000 and Rules framed thereunder which not only defines what constitutes sensitive personal data but also provides statutory safeguards in the form of aforesaid Rules and imposes penalties in terms of compensation and/or imprisonment terms for violating provisions of law.

Further, it is denied that by implementing the UID Scheme which is linked to other welfare schemes, the State is dismantling the functioning of existing welfare scheme and thus Government is depriving people of their basic rights which include the Right to Food, Right to Education, Right to Employment etc. – on the contrary UID Scheme is making social welfare schemes more effective and efficient, by reaching out to those, who have not been able to access the government welfare measures on account of inefficiencies in the system. In fact, being conscious of the possibility of hardship to beneficiaries, special efforts are being made and shall continue to be made to enrol beneficiaries of Government programmes for Aadhaar and in the interim, their access to entitlements and services shall remain unabridged. At the same time it is the firm understanding of the Government that it is its duty to continuously improve and streamline delivery of services, ensure that benefits reach



those who deserve them, and equally importantly, wastes and leakages are reduced by eliminating fakes, duplicates and the undeserving.

Further, it is humbly submitted that the State needs information & communication technology tools as new means and measures to reach effectively and efficiently to every citizen in a country which is diverse in so many ways. UID Scheme provides that unique opportunity to connect a huge population with welfare benefits on the basis of Aadhaar numbers. In this context, the intent of the State cannot be faulted. It is humbly submitted that UID Scheme aids the State to perform its fundamental duty to provide for all basic human necessities.

That contents and averments of para 7 (including sub-para a - x) is ill-conceived, incorrect and hence disputed and denied. It is submitted that the UID Scheme is presently not under any legal vacuum. It is not depriving a citizen his/her fundamental rights as there is no infringement of fundamental right of a person as his/her sensitive personal data is collected only after obtaining his/her express consent. Further, IT Act, 2000 and Rules framed thereunder provides statutory safeguards in the form of aforesaid Rules and imposes penalties in terms of compensation and/or imprisonment terms for violating provisions of law the individual's sensitive personal data. The security measures adopted for data protection in the UIDAI compare with the best in the world, and there is no question of



compromising the data security by any means. The allegations are based on hearsay. UID Scheme is voluntary. Any linking with other social welfare benefit scheme is for the purpose of effective and efficient implementation of social welfare benefit schemes. It is denied that beneficiaries run the risk of denial of service in the absence of Aadhaar as sufficient measures are already in place across the various schemes to handle such exceptions, and by allowing a smooth transition from lack of Aadhaar to having one. In fact, by making sure that only the genuine beneficiaries get the benefits due to them, and such benefits are not usurped by undeserving or non-existent persons, the State is acting in favour of the deserving persons, and not against them.

7. Responses to **sub-para (a -x)** are as follows:

- a. That in response to the contents of sub-para (a), it is stated that the UID scheme remains voluntary. However, the 'exclusion principle' is to be seen from perspective of bringing efficiency in the delivery of social welfare benefits so that the benefits can accrue to each and every beneficiary, who has been entitled to receive such benefits without delay. Such "exclusion principle" works in obliterating the "fakes" and results in savings to the public exchequer and may result in further enhancement of social welfare benefits to a large number of people. It is humbly submitted that a welfare State which intends to provide social welfare benefits to maximum number of beneficiary has every right to curb any corrupt or irregular practices by imposing certain safeguards for the benefit of that deprived section of society, which may not get



purported benefits on account of misuse. It is once again denied that Aadhaar leads to exclusion. In fact, this is the only program of its kind globally where a state-of-the-art digital, and online Id is being provided free of cost at such a large scale to people, and has the potential to change the way service delivery functions in this country. As a mere indicator of this exercise, it is submitted that in a short span of four years, the UIDAI has enrolled over 53 crore individuals for Aadhaar and is operating over 25,000 enrolment centres across the country to enrol an additional 10 lakh persons per day. It is totally incorrect to think or imagine that so many persons have enrolled under some threat or coercion. In fact, this only goes to show the great demand and felt need for a fool proof identity among the people.

b. That the contents of sub-para (b-e) is a matter of record.

c. That the contents of sub-para (f) is a matter of record.

However, there has been much progress in the Business Correspondent model since the report of year 2009 which is dated. As on March 2013, as per RBI, there are about 2.68 lakh villages which had access to banking services either through a branch mode, banking correspondent or other channels.

d. That the contents of sub-para (g-h) is a matter of record.

e. That in response to the contents of sub-para (i), it is stated that the petitioner has only provided the extracts which have no relevance with the instant petition, whereas they deliberately omitted the relevant observations of the Biometrics Standards Committee. Since, the petitioner themselves chose to rely on the committee report, it is thus imperative that the this Hon'ble Court should be apprised of the salient observations and recommendations of the Committee:

- That the standards framed for the UIDAI are fully compliant with ISO Standards,
- That a finger-prints based biometric system shall be at the core of the UIDAI's de-duplication efforts,
- That the analysis show that the UIDAI could obtain fingerprint quality as good as seen in developed countries, provided that proper operational procedures are followed and good quality devices are used,
- That the accuracy and speed of iris-based systems currently deployed is promising and may be feasible in large-scale de-duplication systems, and
- That it is possible to combine multiple biometric modalities including multiple fingerprints to increase overall de-duplication accuracy.

It is further submitted that The UIDAI biometric system design has followed global best practices. In designing UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built



biometric system that is currently considered to be world's best. UIDAI has also regularly measured and published empirical and verifiable results. Reviews of the facts and the measures of the live production system are in stark contrast with the claims made about efficacy and accuracy of biometrics system. A summary of details are as follows:

- (i) In December of 2009, UIDAI Committee on Biometrics published its report titled "Biometric Design Standards for UID Applications".

The committee acknowledged that most other large-scale biometrics deployments were fingerprint-only and a fingerprint-based system may present challenges in India due to large number of people engaged in agriculture and other manual labour intensive occupations. The committee therefore held extensive meetings and discussions with international experts and technology providers. A technical sub-group analysed fingerprint data collected from Delhi, UP, Bihar, and Orissa and found that the quality of the data was not substantially different from those collected in western countries. The committee said that it is possible to improve the accuracy of fingerprint system by additionally using iris. *"Iris can provide accuracy comparable to fingerprints. Therefore fused score of two uncorrelated modalities will provide better accuracy than any single modality and could achieve the target accuracy"*. The final biometric committee report for this study concluded: "The biometric

accuracy levels necessary for de-duplication of all residents of India are achievable”.

- (ii) In December of 2010, UIDAI published a report titled “UID Enrolment Proof-of-Concept Report”. The report documents the findings of enrolment proof-of-concept (PoC) study commissioned by UIDAI in three rural areas of Andhra Pradesh, Karnataka, and Bihar. Among other findings both on process and technology, the report says *“The biometric matching analysis of 40,000 people showed that the accuracy levels achieved using both iris and ten fingerprints were more than an order of magnitude better compared to using either of the two individually. The multi-modal enrolment was adequate to carry out de-duplication on a much larger scale, with reasonable expectations of extending it to all residents of India”*.
- (iii) Subsequently UIDAI developed a multi-modal biometric de-duplication system based on the recommendations of the PoC. The report published in December 2011 has true and tested statistics computed from real operational system at a gallery size (i.e. size of the enrolment database) of 8.4 crore, which is more than 4,000 times the sample size that was available at the time of enrolment PoC. There is no longer a need to rely on small sample size tests or hearsay from other projects.

In the above mentioned report, following key observations are made:



- Failure to Enrol (FTE) Rate: Zero. As a policy, every unique resident, regardless of their biometrics can be enrolled and issued Aadhaar number.
- Biometric Failure to Enrol (B-FTE) Rate: 0.14%. This implies that 99.86% of the population can be uniquely identified by the biometric system. The exceptions (0.14%) however can still be de-duplicated using demographic data and checked manually for fraud. The legitimate cases among these will be issued Aadhaar number.
- False Positive Identification Rate (FPIR): 0.057%. This implies that 99.94% of duplicates returned by the biometric de-duplication system are correctly found. In practical terms, it means that at a run rate of 10 lakh enrolments a day, approximately only 570 cases need to be manually reviewed daily to ensure that no resident is erroneously denied an Aadhaar number. UIDAI is currently having a manual adjudication team that reviews and resolves such cases.
- False Negative Identification Rate (FNIR): 0.035%. This implies that 99.965% of all duplicates submitted to the biometric de-duplication system are correctly caught by the system as duplicates. Given that currently approximately 0.5% of enrolments are duplicate submissions, only few thousand duplicate Aadhaars would "possibly" be issued when the entire country of 120 crores is enrolled due to FNIR.
- Scalability: The system is currently processing 10 lakhs (1 million) enrolments a day with enrolment database

(gallery) of 9 crore (90 million) as at the time of study.

The additional computing power required to handle increasing number of enrolments will not grow at an abnormally high (non-linear) rate; it is well within the design and expectations of the UIDAI.

It is thus evident from the above that the UIDAI's biometric system accuracy is indeed very high and perhaps the best in the world. Both the FPIR and FTE numbers are infinitesimally small in comparison to wildly speculative numbers that have appeared in some of the critiques of UIDAI. In fact, the Aadhaar project has established India as the world leader in practical biometric implementations.

An important point that seems to have been missed in claims of exclusion is that, the huge positive impact of 99.9% and above accuracy, instead of dismissing the programme due to the presence of a small margin of error.

It is important to note that currently Aadhaar system has issued more than 45 crore Aadhaars and more than 53 crore enrolments are done on the ground. UIDAI de-duplication system has successfully detected and rejected about 4 crore duplicates so far. Further, the UIDAI system has an established policy and process to detect and cancel potential duplicates that may have been missed by the biometric de-duplication system. The online biometric authentication ensures



that such cancelled Aadhaar numbers cannot be used ensuring that the system is accurate and clean.

By emphasizing scientific approach to data quality, end to end system monitoring and analytics, completely open standard based "vendor neutral" application architecture, and continuous improvement based on modelling of actual process data, UIDAI has demonstrated a world class system that is secure and scalable can indeed be implemented in India. Copies of Reports as mentioned in (i) – (iii) are annexed herein alongwith Glossary of Terms used and marked as **Annexure R/7 (Colly) (Pages 116 to 210 )**.

- f. That in response to the contents of sub-para (j), it is stated that the UIDAI's Strategic Overview document report dated April 2010 do highlight various risks that UIDAI might face. It is submitted that this overview is to be seen in proper perspective, i.e., to undertake 'risk assessment' and to plan out risk mitigation strategy for the benefit of the project.

It is submitted that UIDAI has clearly articulated its strategy and has been utmost transparent in its working by publishing various materials and data on its website. Like any well thought out strategy, it is critical that all success and failure criteria are clearly identified within the strategy and appropriate techniques are adopted to ensure risks are mitigated. Instead UIDAI chose to be open about its strategy, design, execution plans, and identified potential risks that are systematically mitigated during the execution phase. In fact,

UIDAI's success in enrolling 53+ crore people and issuing more than 45+ crore Aadhaars so far clearly demonstrates that the project is well conceived, well designed, and successfully executed.

It is submitted that State has always been very conscious of the fact that UID project should be implemented with utmost caution and restraint when linked with any scheme, especially Right to Food.

In this context, it is submitted that the UID scheme is *similarly* a kind of end-to-end computerization to identify a resident of India by means of a random unique 12 digit number. That is, if a scheme, like PDS has to reach large number of beneficiaries then it would be imperative that information & communication technology tools to be used for effective and efficient allocation of resources. It is humbly submitted that in the National Food Security Act, 2013 the Section 12 [Reforms in Targeted Public Distribution System] provides that:

- (1) *The Central & State Governments shall endeavour to progressively undertake necessary reforms in Targeted Public Distribution System in consonance with the role envisaged for them in this Act.*
- (2) *The reforms shall inter-alia, include –*
  - (a) *doorstep delivery of food grains to the Targeted Public Distribution System outlets*
  - (b) *application of information & communication technology tools including end-to-end computerisation in order to*



*ensure transparent recording of transactions at all levels, and to prevent diversions,*

*(c) leveraging "aadhaar" for unique identification with biometric information of entitled beneficiary for proper targeting of benefits under this Act,*

*(d) \* \* \* \* \**

That the State is keen to leverage "aadhaar" for proper targeting of benefits 'Targeted Public Distribution System', in the form of Direct Benefit Transfer. The Order of the Hon'ble SC dated 14-09-2011 in WP No. 196 of 2001 titled PUCL Vs. Union of India & Ors is also relevant in this regard.

- g. That the contents of sub-paras (K-R) are matter of record.
- h. That the contents of sub-para (S) giving extracts of the Standing Committee is a matter of record. However it is submitted that there were three 'Note(s) of Dissent' by three members of the Committee against the observations and recommendations. One was specifically against the observation of Dr. Rama Jois, MP as mentioned by the petitioner.
- i. That the contents of sub-paras (T-U) are matter of record. It is submitted that Task Force recommended Aadhaar linkage. It proposes that:

"The Aadhaar number, due to its uniqueness property, serves as a natural financial address for sending payments to accounts of beneficiaries at banks and

post offices through Aadhaar Payment Bridge (APB). The Aadhaar authentication system allows the identity of a resident to be authenticated in real-time in a trusted manner during last-mile payments transactions using Micro-ATMs."

That the contents of sub-para (V) is matter of record. However, it is submitted that in the absence of any domain specific privacy and data protection law in India, the Report of the "Group of Experts on Privacy" analysing NIDAI Bill against nine 'National Privacy Principles' as identified in the said Report should not be seen as relevant in the context of this petition. It is pertinent to state that the UIDAI was a member of the Group of Experts on Privacy, it accepts the need for formal adoption of Privacy principles and is on record for articulating the need for specific Privacy and Data Protection law in India. The UIDAI until such time as a specific law is enacted will adhere to self-regulation as a measure of its commitment to primary and data protection.

The level of commitment of the Government to protect and promote privacy is evident from Clause 5 of the draft National Identification Authority of India Bill (NIDAI Bill), finalised by the Government, which provides for a three member Identity Review Committee (IRC) to ascertain the extent and pattern of usage of the Aadhaar number. The report of this Committee will be laid before each house of the Parliament and the IRC itself would be appointed on



the recommendations of a committee comprising of the Prime Minister, Leader of Opposition and a Cabinet Minister selected by the PM.

j. That the contents of sub-para (w) are ill-conceived, mischevious and hence denied. It is submitted that the Direct Benefit Transfer scheme as proposed by the State, State Government(s) and its instrumentalities are still at a nascent stage.

k. That the contents of sub-para (X) related to representation sent by the petitioner is matter of fact, however the same are disputed and denied to the extent it is contrary to record. Regarding the rest of the contents of sub-para, the same are ill-conceived, mischevious and hence denied. It is submitted that UID scheme provides a proof of identification, and hence the next natural and logical step of such identification process is to link Aadhaar number with other social welfare schemes. It is submitted that it is wrong to assert that there is a legal vacuum, even though the Government has recently approved a legislative framework in the form of NIDAI Bill. Nevertheless, the IT Act and Rules made thereunder are sufficient enough to regulate the collection, disclosure, and use of individuals sensitive personal data in the form of biometric data or information.

8. That contents of Paras 8 -9 are incorrect, misleading and hence denied. It is submitted that UID system acts as a



facilitator as it facilitates end-to-end computerisation resulting in identification of an individual in the form of a random 12 digit unique number. Linking this 12 digit number to various social welfare schemes is the next natural and logical step and for which the State cannot be faulted as the objective and the scope behind every scheme is to make each and every social welfare scheme more effective and efficient and to reach out to maximum number of people. UID scheme is a process to provide benefits to a large number of eligible persons in the shortest possible time. Without a UID scheme it would have been difficult to identify the beneficiaries accurately and cogently.

It is important that the economics of a scheme should be appreciated keeping in view the limited budgetary resources a particular scheme may have. It is more important for the State to weed out the "fakes" and "duplicates" for the larger social good in the short run than to keep on suffering them forever at a huge recurring social welfare cost in view of the limited resources at the command of the State. By making Aadhaar number mandatory, it would be beneficial for the beneficiaries to regularly receive benefits not only from one social welfare scheme but other such schemes as well. Once identified, the benefits will automatically come to them free from any middlemen or outside influence. It would bring regular benefits as envisaged in the scheme rather thereby improving the quality of life. Further, the mandatory nature is thus to protect the well-being of those whose lives and livelihoods depend on some of the entitlements from these welfare programmes.



9. That contents of Paras 10 are incorrect, misleading and hence denied. The sub-para (a - f) wise specific responses are given below:

- a. That in response to sub-para (a), it is submitted that there is currently no Direct Benefit Transfers Scheme implemented by the Government in which the question of inflation linkage arises.
- b. That the contents of sub-para (b) are baseless and incorrect. It is submitted that UNDP studies have shown that in the pilot projects done for Benefit Transfers (without Aadhaar) in Delhi, there has been a significant increase in consumption of some food items. Also, the UNDP study shows that "there is no increase in alcohol consumption due to Benefit transfers". The same is marked as **Annexure R/8 (Pages 211 to 212 )**.
- c. That the contents of sub-para (c) are incorrect and baseless.
- d. That the contents of sub-para (d) are incorrect and baseless. It is submitted that the Government exercising its discretion in choosing (who is poor) in transferring the money is total unfounded and baseless as even today it is the Government which decides if a person is eligible for a particular benefit or not.
- e. That in response to the contents of sub-para (e) it is submitted that the petitioners' claim that Benefit Transfer systems may be better suited for countries like Brazil and Mexico where the poverty rates are lower are incorrect and baseless, as the literature on cash



transfers shows that the Direct Cash Transfer systems generally helped reduce national poverty. In Mexico there were large effects on poverty as it is estimated that 'Oportunidades'(Mexico's CCT program) decreased the squared poverty gap by approximately 29 percent. In Brazil, the impacts of the *Bolsa Família*(Brazil's CCT program) program show that the squared poverty gap by a substantial amount, 15 percent. Also, there is evidence that Cash Transfers lead to reduction in inequality. It is submitted that the purpose of the Direct Benefit Transfers in India is to actually reduce poverty. The same is marked as **Annexure R/9 (Pages 213 to 214).**

- f. That in response to the contents of sub-para (f), it is submitted that they are incorrect and baseless. The data by RBI shows that the number of bank branches of Scheduled Commercial Banks in Rural areas has seen an increase from 32,121 branches as of March 2004 to 36,356 branches as of March 2012 rather than a decrease as pointed out by the petitioners. Also, RBI reports that as on March 2013, about 2.68 lakh villages, had access to banking service either through a branch mode, a banking correspondent or other channels. The extract of the report is marked as **Annexure R/10 (Pages 215 to 216 ).**

10. That contents of Para 11 are incorrect, misleading and hence denied. It is submitted that the Direct Benefit Transfer (DBT) schemes are innovative social welfare plans conceived by the State to directly transfer the money/Benefit to the



recipient's account. It is further submitted that the petitioners' prayer that Direct Benefit Transfers to persons enrolled under UIDAI if introduced across the country is fraught with danger and would deprive the poorest of the poor in India their basic rights is mischievous and an imagination of the petitioners. In fact, the Direct Benefit Transfers is the largest e-Governance reform which aims to ensure that the beneficiaries of various schemes get their benefits without any middlemen and rent-seeking.

11. That the contents of Para 12 are misconceived, incorrect and hence denied. Response to this para has already been given above the same is not being repeated for the sake of brevity.
12. That the contents of Para 13 are misconceived, incorrect, baseless and hence denied. It is submitted that the petitioners' plea that the Aadhaar based DBT involves vast sums of tax payers money is false and baseless as a study by National Institute of Public Finance and Policy (NIPFP) has shown that even after taking all costs into account, and making modest assumptions about leakages, of about 7-12 percent of the value of the transfer/subsidy, it concluded that the Aadhaar project would yield an internal rate of return of 52.85 percent to the government.
13. That contents of Para 14 are incorrect, misleading and hence denied. The contents of this para have already been responded to previously above.

Responses to sub-para (a –i) are as follows:



a. That the contents of sub-para (a) are incorrect, misleading and hence denied. Use of Aadhaar is both planned and possible in a staggered manner with out 100% coverage with the help of a robust exception management system. Given the fact that in a short spell since its introduction more than a crore payment of benefits have been made in beneficiary accounts using Aadhaar it cannot be said that the result of DBT using UID for delivery have been demonstrably below-par in terms of reach and efficiency. The process of DB-T has just been initiated and that too in a very selective manner.

b. That the contents of sub-para (b) are incorrect, misleading and hence denied. The petitioners' have failed to provide any study or empirical analysis suggesting that MGNREGA, PDS and Pensions are already burdened with inefficiencies. Further, the petitioner has failed to identify any such inefficiency in such schemes. Further, the assertion that the UID system does not remove any of the inefficiencies in such schemes but only adds to them is meaningless without any supporting evidence. Further, for the schemes like MGNREGA, PDS and Pension schemes, UID is not yet made mandatory. It is submitted that the use of Aadhaar can actually help in removing some of the inefficiencies in these schemes like delayed payments, ghost beneficiaries etc. Wherever introduced Aadhaar has streamlined working of schemes and there is no evidence to support the exclusion claim of the petitioners given the



clear directions of the Government to ensure no denial of service for want of Aadhaar or bank accounts.

- c. That the contents of sub-para (c) are incorrect, misleading and hence denied. It is submitted that the technology selection for UID project has been very vigorous and after a lot of deliberations with government stakeholders before biometric applications has been selected for such a mammoth task.

It is submitted that UIDAI offers Aadhaar authentication that can be used alone or in conjunction with agency/application specific authentication. Aadhaar authentication should not be considered as a replacement for existing authentication systems, rather a complimentary scheme. UIDAI encourages complimentary authentication frameworks that may be specific to a domain/application, to take advantage of Aadhaar as a global identity system. UIDAI strongly believes many different types of authentication schemes will co-exist without one fully replacing another.

Further, in addition to co-existing with existing external authentication schemes (means current systems and investments continue to work), UIDAI has created an open ecosystem of vendors based on standards and certification schemes. Such ecosystem of device vendors, application vendors, etc. can only boost healthy competition in the market allowing Government agencies adopting Aadhaar

authentication to procure these devices in open market at best rate.

It is further submitted that almost all critical systems of today, be it a banking system or railway reservation system, have moved to an "online" model due to availability and minimal cost of such "online" systems. Arguments made towards an offline system is not taking any of the advancements India is making and not designed for resident anytime anywhere convenience. It is significant to note that Aadhaar authentication can be used in conjunction with existing systems and not to be considered as a replacement for all authentication systems.

Further, typical authentication systems have the following types of factors:

1. What you have: Something the user has in possession (e.g., a card, security token, or mobile phone, etc)
2. What you know: Something the user individually knows as a secret (e.g., a password, ATM PIN, etc)
3. Who you are: Something the user individually is or does (e.g., fingerprint, iris pattern, signature, etc).

Aadhaar authentication system provides multiple factors of "token-less" authentication using biometrics (fingerprints and iris) and/or mobile OTP (One Time Password).

It is submitted that UIDAI encourages user entities to adopt federated authentication system, i.e., a combination of Aadhaar authentication and their own authentication systems.



In case of user entities that already have their own authentication systems in place, Aadhaar authentication is envisaged to act in conjunction with existing authentication systems and strengthen the overall authentication.

It is further submitted that UIDAI offers Aadhaar authentication that can be used alone or in conjunction with agency/application specific authentication scheme (called "federated authentication"). For example, in federated authentication, a Bank could choose to use an ATM card and fingerprint for authentication of which the ATM card is authenticated within Bank's application whereas the fingerprint is authenticated using Aadhaar authentication.

It is also submitted that Aadhaar authentication should not be considered as a replacement for existing authentication systems, rather a complimentary scheme. UIDAI encourages complimentary authentication frameworks that may be specific to a domain/application, to take advantage of Aadhaar as a global identity system. For example, a Government application may use Aadhaar during registration and provide initial User ID and password for their Internet applications. In applications where there are no local authentication schemes, agencies may use Aadhaar authentication 'as-is' and still gain great value in strongly identifying their customers/ beneficiaries.

Further, UIDAI has designed the system to provide both biometric and non-biometric (mobile based) authentication to all its user agencies. UIDAI believes that applications must

choose one or more authentication schemes based on their needs that may be Aadhaar based or non-Aadhaar based or a combination of both. Usage of appropriate authentication schemes (whether it is password based or card based or biometric or a combination thereof) depends on the specific needs of the application. UIDAI strongly believes all these will co-exist without one fully replacing another.

It is also submitted that Aadhaar authentication device ecosystem is specifically to be vendor neutral and interoperable. Over 30 different fingerprint sensors have been certified by STQC based on the UIDAI specifications so there is no vendor monopoly.

It is submitted that the cost to UIDAI for online authentication is miniscule, given the existing enrolment (de-duplication) infrastructure. Cost of online authentication is estimated to be a few paisa per authentication and for handling occasional connectivity issues in remote areas, UIDAI provides the capability for "buffered" authentication. The encrypted authentication packet may be sent to the UIDAI server for authentication after connectivity is established within a maximum stipulated time.

It is humbly submitted that UIDAI has conducted several Proof of Concepts (PoCs) across the country to scientifically study the accuracy and performance aspects of biometric authentication and come up with standards, certification



schemes, best practices, and formal reports regarding biometric authentication.

d. That the contents of sub-para (d) are incorrect, misleading and hence denied. The use of Aadhaar for MGNREGS and Old Age Pension clearly proves that upto 96 % beneficiaries are getting successfully authenticated and the rest are being paid using legacy systems without any denial of service. In the month of September 2013 alone over 11 lakh such beneficiaries were authenticated by Aadhaar establishing its robustness when used for manual labourers and older persons. It is submitted that UID provides end-to-end computerisation. Biometrics applications have been chosen to provide one uniform database based on same set of attributes for the entire resident population of India. Further, the research article authored by Samuel P. Fenker and Kevin W. Bowyer titled 'Experimental Evidence of a Template Aging Effect in Iris Biometrics' as referred by the petitioners should not be taken cognizance of because of miniscule sample (subject) size of 43 subjects only.

Further, it is submitted that In fact, by using Aadhaar for the DBT, it will be possible to not only send the money into the bank account of the genuine beneficiary, but also to create a completely auditable and transparent trail of where the funds have gone, which may not be the case with DBT done without Aadhaar. It is also submitted that the local level monitoring can be done more effectively as the entire transaction is available for the first time as a



digital record to the agencies, and there is a facility available to the beneficiaries to get the information from the bank regarding deposit of funds in their bank account directly on their mobile phones, which are commonly available in the country. Furthermore, the existing means of local-level monitoring are also available to the stakeholders, including the Right to Information.

- e. It is humbly submitted that as regard contents of sub-para (e), the petitioners' without understanding the technological architecture behind UID are trying to mislead this Hon'ble Court. It is thus important that issues raised by the petitioners' should be clarified: *Firstly*, Centralised databases have not been connected to other domain databases so as to secure the database from any cyber threats, etc. Had all attributes been collected and collated at one silo then there would have been grave risk of cyber threats and attacks. ----*Secondly*, it is important that for the reasons of data protection and privacy, any access to such databases are controlled and any correction/alteration rights given at central level and not at the local level from the point of view of information security. *Thirdly*, by asserting that by connecting different silos of information there can be a misuse for anti-constitutional purposes is nothing but figment of imagination on the part of the petitioners'. Access to any database connected with UID scheme is highly restricted and every time there is access, not only the access logs are maintained and retained but there are also security audit which is performed.



periodically and audit trails are retained and preserved. *Fourthly*, the private companies which collect data for UID scheme do not have access to data. Data collected during enrolment using UIDAI provided software ensures that the resident data including raw biometrics is encrypted using strong encryption technologies before even saving to any disk. *Fifthly*, it is denied that State is concealing information from its own people. A UID database containing sensitive information needs to follow certain security protocols for the benefit of its own people. It is further submitted that although India is presently not having a domain specific data protection law, nevertheless, presently the IT Act, 2000 and Rules made thereunder is indeed a data protection legislation as it contains adequate provisions on data protection and privacy.

It is further submitted that moving an offline or local system to online centralized systems (classic case is Indian Railways) provide significant convenience and choice to residents in accessing from anywhere. Similarly, banking systems (moved from purely branch based automation to central core banking systems connecting all branches, ATMs, etc. across the entire banking network), various Government systems such as MNREGA, or other national systems such as Railway reservation systems, Passport or Income Tax systems have benefited the entire country.

Unnecessarily restricting them to only one branch or one locality only creates lack of choice and inflexibility to the whole system.



It is submitted that Government believes that online, central systems itself is a great design allowing no misuse of information islands kept in local, less secure places. Instead entire data is encrypted and kept safely in computers that are fully controlled by the Government. This centralized and online design allows Aadhaar identity to be truly national allowing highly migrant India to access and claim their identity anytime anywhere and avail their services. Further, appropriate security and control measures are in place within the data centres to ensure data is never accessed without proper authorization. Several measures have been taken to ensure end-to-end security of resident data, spanning from full encryption of resident data at the time of capture, tamper resistance, physical security, access control, network security, stringent audit mechanism, 24x7 monitoring, and measures such as data partitioning and data encryption within UIDAI controlled data centres. This world class security technologies and processes ensure resident data is fully protected while providing convenience and choice to residents.

f. That as regard to contents of sub-para (f), it is submitted that the State while making UID mandatory for Direct Benefits Transfer (DBT) is keen to resolve the issues of financial exclusion by introducing biometrics based Banking Correspondent model in the form of Micro ATMs as articulated by the 'Task Force on an Aadhaar Enabled Unified Payment Infrastructure'. The use of Aadhaar is reducing transaction costs, taking banking outside bank branches to the field, making transactions simple and



secure, giving choice to the poor to bank and helping monitoring. This model is already approved by the Reserve Bank of India and operations have been started by certain banks in certain geographies.

- g. That the contents of sub-para (g) are incorrect, misleading and hence denied. It is submitted that UID is a facilitator and the State by using the UID to access existing benefits is trying to utilize the potential of Aadhaar numbers for providing direct Benefit transfer to the beneficiaries bank accounts. The petitioner has not provided any cogent reason when it asserts that it will never work and cause complete havoc when it would be imposed on large delivery schemes such as MGNREGA, Rations and Pensions. It is denied that UID scheme is an uncertain and untested technology and the experimentation is being largely done on the poor who can least afford to bear the failures in the experiment.

It is submitted that the State has undertaken selectively these delivery models related to PDS, pension, etc. which have been administered in offline mode for the last many decades, now with the help of ICT tools the State wishes to empower the poor with schemes, wherein they could be able to avail benefits regularly without any interference. These schemes facilitated by Aadhaar is kind of technology-enablement of large section of population who have always remained in the category of digital have not's.



It is submitted that it is not about receiving the exact same benefit by having a mandatory UID number under a scheme, but receiving it regularly, whether every day, every week, every fortnight or every month as per the scheme. It is the regularity of entitlement, which would bring quality of life to the poorest of the poor and not the 'exact same benefit' as argued by the petitioners. This can only be brought about by digital empowerment using Aadhaar number as a facilitator.

h. That the petitioners have failed to give any cogent reasons to support their assertion that Aadhaar based payment network will clearly take decades before it will cover its targeted beneficiaries. The fact is that in enrolling more than 53 crore residents in about three years and setting a speed of enrolling 10 lakh residents per day the UIDAI has conclusively established the ability to cover the entire population expeditiously and in a record time. Possession of Aadhaar is sufficient as per RBI for getting bank accounts and thus more than 53 crore persons are being enabled to open bank accounts which is more than number of existing account holders. To this end 64 banks are working with UIDAI to open bank accounts at the time of enrolment for Aadhaar. The Indian Banking Association has recognised the Aadhaar enabled Micro-ATM for banking transactions recognising its technical efficacy and economy over conventional banking. More than 17,000 such devices in the field made over 12 lakh transactions in September 2013. Clearly Aadhaar is set to revolutionise



banking for poor in remote areas and the apprehensions of the petitioners are totally unfounded. The petitioners have failed to understand that India is considered as one of powerhouse countries in ICT and in fact we are the code writers to the world. The petitioners have to come out of their conservative, non-technology mindset to appreciate that UID based scheme are initiatives of the State towards Electronic Service Delivery (ESD) in the realm of electronic governance. The rapid scale of telecom coverage in the country is an example which proves that substantial scale can be achieved in short period of time if the service delivers value to the people.

The petitioner specifically has not impleaded any State Government which has made the UID mandatory for many benefits and services, including registration of marriages.

14. That the contents of Para 15 are incorrect, misleading and hence denied. It is denied that the State by implementing UID system in a legal vacuum is directly infringing the fundamental rights of a person because of lack of data protection. It is submitted that even though the Government has recently finalised the draft NIDAI Bill, nevertheless, presently the IT Act and Rules made thereunder, are sufficient enough to regulate the collection, disclosure, and use of individuals' sensitive personal data in the form of biometric data or information.



It is difficult to accept the petitioners' view that due to non-implementation or ineffective implementation of the UID by linking it with other social welfare benefits schemes', persons who are currently benefitting under such existing welfare schemes run the risk of being excluded. It is submitted that the State on its part has only initiated a selective roll-out of social welfare benefit schemes and linking with UID number with a view that not even single beneficiary should be denied benefits. There is no violation of a person's right guaranteed under Articles 14, 16, 21 and 21-A and State is not shirking its duties towards its citizens under Part IV of the Constitution.

It is submitted that the State is taking the UID system to its natural and logical extension, i.e., to link Aadhaar number with social welfare schemes to optimize the resources available to the State. In fact, State using end-to-end computerisation as a means to achieve social goals as enshrined in the Constitution. As stated by the Petitioners themselves, the DBT scheme is currently being run as a pilot, and by definition, a pilot is run only to test the ground for enabling corrections and improvements in the model before it is scaled up. Therefore, the apprehensions expressed by them that it would lead to denial of various rights, especially of the poorest of the poor are totally unfounded and without basis. The scaling up is done only once the learnings from the pilot are available, after making the requisite corrections and changes and never as it is.

It is further submitted that the petitioners' have failed to realize that it is the end-to-end computerisation which has resulted in



a Aadhaar number and, it is again end-to-end computerisation which would result in targeted beneficiary getting the benefits of social welfare schemes of the State on regular basis.

15. That in response to para 16 and accompanying grounds, the respondent submits as follows:

### **Reply to Grounds**

A. That in response to ground A, it is denied that the State by implementing UID system in a legal vacuum is directly infringing the fundamental rights of a person because of lack of data protection. It is submitted that even though the Government has recently finalised the draft NIDAI Bill, nevertheless, the IT Act and Rules made thereunder, are sufficient enough to regulate the collection, disclosure, and use of individuals' sensitive personal data in the form of biometric data or information. It is submitted that the State on its part has only initiated a selective roll-out of social welfare benefit schemes and linking with UID number with a view that not even single beneficiary should be denied benefits. There is no violation of a person's right guaranteed under Articles 14, 16, 21 and 21-A and State is not shirking in its duties towards its citizens under Part IV of the Constitution.

In so far as the Government of India itself is concerned, it has initiated the Direct Benefit Transfer (DBT) Scheme to provide Benefit transfers using Aadhaar in the Bank Accounts of beneficiaries of select Central Schemes in specified districts only. The instructions issued for implementation of DBT clearly states that no person should be denied service for want of having Aadhaar or a Bank Account. A copy of the Office Memorandum dated 26.12.2012 is annexed herewith as Annexure R/11 (Pages 217 to 218 ). Care has



been taken to ensure there is no denial of service by introducing this scheme only in districts with a reasonable coverage of Aadhaar. A copy of MIS report on population coverage in 121 DBT districts selected for rollout of Aadhaar Enabled Services (till September 29, 2013) is annexed herewith as **Annexure R/12 (Pages 219 to 221 )**. Special arrangements have been made in these districts to enrol beneficiaries for Aadhaar and to generate their Aadhaar number on priority. Instructions have been given for provision of service without Aadhaar to beneficiaries until they are able to obtain their number and grievance redress mechanisms have been put in place to take care of exceptions and aberrations.

There is no evidence to suggest denial of service for want of Aadhaar under any Central Government programme. On the contrary since the commencement of the programme in January 2013 more than 65,70,000 successful transactions have been made of Benefit transfer to the bank accounts of beneficiaries using Aadhaar and this number is growing month on month. In the circumstances stray exceptions, apprehension or unfounded allegations of petitioners cannot be reason to put a question mark against the implementation of a well thought out scheme of the Government of India which is clearly in public interest. If anything by doing so the petitioners are playing in the hands of unscrupulous elements that stand to be identified and eliminated from list of beneficiaries of Government programmes to which they have no rightful claim.

The DBT seeks to apply the benefits of Aadhaar to existing schemes of the Government of India with a view to weed out fakes and duplicates from the beneficiary lists and facilitate doorstep payment



to beneficiaries by linking their bank accounts and Aadhaar number so that payments can be made by Business Correspondents (BCs) of banks using Aadhaar enabled handheld terminals in remote areas. To ensure beneficiary is not inconvenienced, until Aadhaar number is available and linked to bank account, benefits continue to be provided following the old procedure to such persons while those who have obtained Aadhaar and linked it to their bank accounts move to the new system.

B. That in response to ground B, it is submitted that the collection of sensitive personal data including biometric details of an individual is permitted under the IT Act and Rules [Information Technology Reasonable Security Practices and Procedures, and Sensitive Personal Data or Information Rules, 2011] made thereunder. The use of biometrics like photo and fingerprint are age old practises and the UIDAI is only computerising them and making them secure as well as convenient.

C. That in response to ground C, it is submitted that UID's Aadhaar number is the end result of end-to-end computerisation and should be seen as efficient and reliable and thus can be used to disperse benefits under various welfare schemes by the Direct Benefit Transfer system.

That regarding the inherent flaws which have been detailed in the instant petition in the form of sub-grounds (a –f), it is submitted that the UIDAI soon after its formation set up a Biometrics Standard Committee in order to frame biometrics standards based on existing national and international standards with the consensus of various



government stakeholders. It concluded that the ISO 19794 series of biometrics standards for fingerprints, face and iris set by ISO are the most suitable. It is significant to note that following biometrics images as per the best practices followed by international users and ground reality in India, which are being captured for the purpose of enrolment: (i) iris (both eyes), (ii) 10 finger prints (of 10 fingers) and (iii) full frontal face. The issues of aging and nature of work and its effect on finger prints and iris have already been taken care of while framing best practices by UIDAI. Since the introduction of DBT in January 2013 65,70,000 number of successful transactions have been made using biometric authentications have been made which should allay the unfounded apprehensions of the petitioners

It is further submitted that UID linked social welfare scheme is all about regularity of receiving social benefits thereby raising the quality of life of the beneficiary rather than leading to social exclusion. Further with UID linkage, it would imply simultaneous access to multiple schemes as per the eligibility requirements in real time basis, bypassing offline (physical) administrative process(es) of application and selection, which could be time consuming.

It is submitted that UIDAI has actively advocated multi-modal biometric and multi-factor authentication. This is specifically done to ensure inclusion of everyone into the system. In addition, UIDAI has actively advocated a "*federated authentication*" model wherein agencies can use UIDAI provided biometric and no-biometric factors by itself or in conjunction with their factors (such as ATM cards, etc).

Moreover, UIDAI, in its best practices, has clearly articulated the need for exception handling quite like the way a bank would handle



someone who cannot use an ATM machine. Exception handling is part of all systems and this is no different to ensure all customers are provided the service using any of the acceptable authentication means. Dismissing the entire system due to a small percentage of exception requirements is not the right approach. Usage of multi-factor authentication, usage of appropriate exception handling, usage of alternate agency provided authentication schemes, etc can easily ensure 100% of people are covered in every system.

It is further submitted that the DBT system through micro-ATM using biometric and UID number is under active consideration.

The need for national identification number in UK and USA cannot be equated with India. The context in India is primarily about access to social welfare benefits.

It is submitted that more countries including India use biometric for national level programs than ever. The number of biometric program failures is few and far less than the number of successful biometric at national level. The petitioners conveniently omit all successful programs and point to one rare failure. US Visit program having more than 150+ million people, Indonesian e-KTP national identity program having more than 160+ million people, Mexico's national identity program, Brazil's identity card program, and similar programs in several African countries, Asian countries, etc are examples of successful adoption.

It is humbly submitted that the UK project has little in common with the UID effort in India. The UK project was initiated with the goal of counter-terrorism and immigration control. As such it was collecting



a lot of details about the person, whereas the UIDAI project's goal was creation of a single ID for every resident using minimal data to improve service delivery while being inclusive to the poor and marginalized. Just citing failure of a project that has very little similarities is neither appropriate nor accurate.

D. That in response to ground D, it is submitted that the petitioners are making hyperbole assertions without any substantial evidence. Till today, not a single case has been reported wherein UID numbers have been used to obtain fake identities for terrorist activities. Creating a fake Identity under Aadhaar is infinitely more difficult than any other ID system. The UIDAI has as rule procured services strictly as per Government of India procedures and with full transparency.

E. That in response to ground E, it is submitted that the collection of biometrics is not a violation of right to privacy as it is allowed under the IT Act and Rules made thereunder. Further, whether it is under the Indian Telegraph Act, 1885 along with Rules, especially Rule 419A or the IT Act alongwith Rules under section 69 [power to intercept or monitor or decryption of any information through any computer resource], the spirit of guidelines in terms of appropriate safeguards as laid down by this Hon'ble court in *PUCL v Union of India*, (1997) 1 SCC 301 have already been observed.

It is further submitted that collecting the biometrics data by itself cannot be considered violation of privacy. Currently many services in



India require capture of biometrics even without having Aadhaar.

Some of them are listed below:

- Registration of Sale / Purchase of Property in many states
- RashtriyaSwasthBimaYojana (RSBY)
- Passport system
- Driving License
- Examination systems in many states
- Several Government attendance systems
- PDS systems in some states for their smart card use
- Banking systems for BC based smart cards

Many of these systems mandate registration (for example, Indian passport cannot be obtained without providing demographics and biometric data or entry into US cannot happen without providing full fingerprint scan), property cannot be registered in several states like Maharashtra, Karnakataetc without providing biometrics with a view to curbing benaami transactions. Moreover, photograph and physical thumb impressions are also biometrics and there are innumerable services where photographs and thumb impressions have been mandated by the government agencies over the decades, if not centuries. Only difference with Aadhaar is that biometrics are being taken in electronic form instead of physical form.

Instead of completely banishing the need for using biometrics, it is critical that systems that use biometrics be made secure. It is submitted that the UIDAI has taken utmost care in ensuring data,

especially biometrics, is protected end-to-end. Aadhaar enrolment process is standardized, simple and collects only minimal data required to issue an identity. Data collected is fully encrypted even before saving to disk ensuring no data can be ever stolen by any agencies or persons. This data is securely uploaded to UIDAI controlled data centres where each and enrolment is processed. Within the data centre, data is protected using best in class security infrastructure and encryption techniques. No vendors have unauthorized access to the data and no database contains complete data (it is partitioned into multiple databases and zones for further protection). Raw biometric data is never stored unencrypted anywhere even within the data centres. Aadhaar system has used best in class encryption and security mechanisms to ensure resident data and biometrics are never stolen or tampered with.

The petitioners' have failed to highlight a singular case of hacking of or attempt to hack the centralised database. Even in case of data theft, identity fraud, impersonation etc., the same can be addressed under section 66 [computer related offences], 66C [punishment for identity theft] and 66D [punishment for cheating by personation by using computer resource] of the IT Act.

F. That in response to para 1-4 of ground F, it is submitted that the Right to Food, Right to Employment and Right to Education guaranteed under various schemes will not be infringed on account of linking such schemes with UID system as the State as mentioned



above will make sure that no current beneficiary under a scheme to get affected for want of UID's Aadhaar number.

That in response to para 5-6 of ground F, it is denied that the State would be shirking in fulfilling its duties under Part IV of the Constitution or denying personal liberty of persons.

G. That in response to ground G, it is submitted that the petitioners lack understanding of technology issues involved in UID -system, which represents end-to-end computerisation. Any linking of aadhaar with social welfare benefits is meant to fast forward the benefits to the recipients. The UID system is not designed for the purpose of monitoring, profiling, surveillance or any such activity by the State. It merely facilitates electronic service delivery of social welfare schemes to the beneficiaries.

It is an established fact that India lacks a comprehensive Privacy legislation. However, this does not mean that till the time there is no such legislation, a large section of society should remain marginalised because of the mistaken notion that UIDAI violates right to privacy. Had this been the issue, then the Voter ID card project should not have been started and voter's data not put up on websites until the above said law was passed, similarly the NREGA project should not have been launched and the job card information should not be put up on websites as currently done or passport systems collecting demographics and biometrics should not have been done!

Security and privacy of data within Aadhaar system has been foundational and is clearly reflected in UIDAI's strategy, design and its processes throughout the system. UIDAI has ensured that the resident data is handled with the utmost care within its own and partner domains.

In addition to end-to-end strong security measures, following design is used keeping privacy in mind:

- (i) The system restricts itself to the collection of the minimal amount of data (as decided by the DDSVP Committee)
- (ii) The system does not collect or store any other IDs like PAN, Drivers License, etc. to prevent linkage between various databases
- (iii) System has implemented various best-in-class strategies from the technology perspective to keep resident data secure. For instance, the UIDAI data centres have multiple zones, with firewalls between such zones. There is no direct access to the production zone from the Internet
- (iv) Only demographic data (name, gender, DoB, Address, and photo – data that is part of the Aadhaar letter is provided to partners (for printing, opening bank account, etc) based on resident consent.
- (v) All resident data that is sent to partners (for instance printing, and opening bank accounts) is encrypted and digitally signed with strong encryption to prevent any theft of data



(vi) Guidelines have been issued to partner agencies (Registrars, Enrolment Agencies), and others involved to ensure that resident data is kept secure, and confidential.

In particular, these policies emphasize that:

- a. Partners must collect the minimum data from residents
- b. They must provide a justification to the resident for the collection and use of this data
- c. They must obtain a clear consent from the resident for the collection and use of this data.

H. That in response to ground H, it is submitted that the UID enrolment remains voluntary and the State will make sure, as mentioned above that no current beneficiary under a scheme will unreasonably get affected for want of UID's Aadhaar number.

I. That in response to ground I, it is submitted that it is wrong to assert on the part of the petitioners' that there is a legal vacuum, even though the Government has recently finalised the draft NIDAI Bill, nevertheless, presently the IT Act and Rules made thereunder, which are sufficient enough to regulate the collection, disclosure, and use of individuals sensitive personal data in the form of biometric data or information.

J. That the contents of ground J of the Writ Petition are misconceived and hence disputed and denied. It is submitted that the UID project is being executed pursuant to a notification of the Government of India whereupon, the Unique Identification Authority of India (UIDAI)



has been set up and duly constituted as an Authority of the Government of India by an executive order under Article 73 of the Constitution of India as an "attached Office" of the Planning Commission of India. Subsequently, its Chairman and Officers have been appointed and has been given the responsibility to lay down plan and policies to implement UID Scheme, own and operate the UID database, be responsible for its updation and maintenance on an ongoing basis. It has been assigned responsibilities under the Government of India (Allocation of Business Rules) in exercise of the powers conferred by Clause (3) of Article 77 of the Constitution. The UIDAI is authorized to incur expenditure from the Consolidated Fund of India as approved every year by the Parliament under the Appropriations Act. All issues relating to the Unique Identification Authority of India including its organization, plans, policies programmes, schemes, funding and methodology to be adopted for achieving the objectives of the Authority are supervised by a duly constituted Cabinet Committee on Unique Identification Authority of India related issues. It is essential to mention here that it is an established principle of law that the executive cannot act against the provisions of a law. However, in view of Article 73 and 162 of the Constitution of India, the respective Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation. In the absence of any legislative framework, if any agency or individual refuses to give information as is required by UIDAI, the purpose of collecting the data will get frustrated and no sanction can be imposed against the person for such refusal. Further, with a view to achieve the objective of UIDAI, it is essential to have a legislative backing empowering the Authority. Therefore, in the interest of the administration, till the time such



legislation is framed, the Authority can continue to function under the executive order issued by the Government.

It is respectfully submitted that the petitioner tries to assail the instant subordinate legislation on the ground of malafide on the part of the Government. It is respectfully submitted that it is an established principle of law laid down by this Hon'ble Court in a catena of Judgment/s, that no legislation could be challenged on the ground of the malafide on part of Government. As stated earlier, pending of a Bill for the consideration of the Parliament does not debar for the Government from exercising its power under Article 73 of the Constitution of India. It is submitted that this Hon'ble Court in *J.R Raghupathy v. State of A.P.*, (1988)4SCC364, has categorically held that, on the perusal of Article 73 and 162 of the Constitution of India, prima facie it appears that the executive powers of Union and States under Article 73 and 162 of the Constitution of India are much wider than the prerogative powers in England. In the interest of the administration of the country, the executive have an important role to play in the governance of the country as the judiciary or legislature.

K. That in response to grounds K, it is submitted that citizens/residents are not deprived of their fundamental rights. The State will never allow any social exclusion and will make sure as mentioned above that no current beneficiary under a scheme to get unreasonably affected for want of Aadhaar number.

It is respectfully submitted that no person would suffer unreasonably for not having Aadhaar Number in view of the notification issued by the Government of India and adequate steps will be taken to ensure



the provision of adequate time and opportunity to bonafide residents to obtain an Aadhaar Number. In the meanwhile no resident is put to hardship for not having obtained Aadhaar number in spite of having applied for the same or because of the fact that the area where he/she resides is still in the process of being covered. Those persons would be governed by the Executive instructions of the Government of India and will not suffer in obtaining benefits under subsidy scheme or welfare scheme.

L. The UIDAI has undertaken a very large number of studies, Proof of Concept and Pilot Projects to conclusively demonstrate the efficacy of Aadhaar to uniquely recognise individuals, authenticate them in a few seconds using simple, secure and inexpensive devices and apply Aadhaar to deliver a host of services. Moving beyond pilot projects Aadhaar has infact in a matter of a short time successfully authenticated over 25 lakh individuals at service points which is a large enough number to put its usage beyond doubt. This is in addition to over 53 crore persons enrolled. The benefits of Aadhaar under DBT are manifest amongst others in detecting duplicates in its application to distribution of LPG subsidy covering over 1 crore transactions since June 2013. The utility of linking Aadhaar to welfare schemes is also recognised by the order of this Hon'ble Court dated 14.09.2011 in PUCL v Union of India WP(C) No. 161 of 2001. It is therefore humbly prayed that petitioners plea to resist linkage of Aadhaar to welfare schemes may be rejected.

M. In response to the grounds raised in M it is humbly submitted that citizens/residents are not deprived of their fundamental rights. The State will never allow any social exclusion and will make sure as



mentioned above that no current beneficiary under a scheme to get unreasonably affected for want of UID's Aadhaar number. Also it is submitted that due to the reasons cited in above paras it is understood that Aadhaar is not an experiment but a well conceived administrative tool for social inclusion and plugging the wastage of public money. Hence it is humbly prayed that petitioner's plea may be rejected.

N. In response to the grounds raised in N, UIDAI has no comments to offer.

### REPLY TO THE PRAYER CLAUSE

That the prayer clause is misconceived, frivolous and misleading.

(i) That in view of the contentions stated above, it is clear that the UID is in no manner violative of any fundamental rights of citizens of India, and is not in any manner illegal or unconstitutional. And therefore, there is no occasion for a writ, order or direction in the nature of mandamus to be declared against the same.

(ii) – (iii) That the contents of prayer clause (ii) to (iii) are strongly denied as they are highly mischievous and intended to delay the implementation of a project whose aim is to promote inclusion and benefit marginalized sections of society who have not formal proof of identity and hence experience difficulties in accessing various welfare schemes that are implemented by the Government of India and State Governments.

(iii) That in reply to prayer clause (iv), it is stated that under the facts and circumstances as detailed in this counter affidavit, there is no occasion to issue any writ, order or direction against the answering respondent.



## PRAYER

In view of the above averments, contentions and legal position, it is most humbly submitted that this Hon'ble Court may be pleased to:

- a) Dismiss this petition as frivolous, misleading and legally incorrect
- b) Award exemplary costs to the respondents.
- c) Pass any other or further order/s that this Hon'ble Court may deem fit under the facts and circumstances of the present case.

  
DEPONENT

## VERIFICATION

Ashish Kumar  
Assistant Director General  
Unique Identification Authority of India  
Planning Commission  
Connaught

I, Ashish Kumar, working as Assistant Director General, in the UIDAI do hereby verify on this .....day of October 2013 that the contents of Preliminary objections and Grounds are correct to my knowledge derived from the official records; and also on the basis of legal opinion received and believed to be correct; and the last para is response to the reliefs/prayers.

Delhi

Date:

  
DEPONENT

Ashish Kumar  
Assistant Director General  
Unique Identification Authority of India  
Planning Commission, Jeevan Bhara  
Connaught Circus, New Delhi-1100